



13 JUN 2006

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In re Application of SHUSTER et al.
Application No.: 10/500,444
PCT No.: PCT/US02/41834
Int. Filing: 31 December 2002
Priority Date: 31 December 2001
Attorney Docket No.: 14848-004US1
For: METHODS AND MATERIALS FOR
MODULATING TASK-3

:
: DECISION ON
:
: RENEWED PETITION
:
: UNDER 37 CFR 1.47(a)
:
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This is a decision on applicant's renewed petition under 37 CFR 1.47(a) filed in the United States Patent and Trademark Office (USPTO) on 13 February 2006. Applicant also filed a request for a four month extension of time, which is granted.

BACKGROUND

On 29 June 2004, applicant filed a transmittal letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee.

On 19 January 2005, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), and the surcharge for filing the oath or declaration after the thirty month period, was required.

On 18 May 2005, in response to the Notification of Missing Requirements, applicant filed a petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4). The petition requested the acceptance of the application without the signature of inventor Ulf N.G. Arvidsson.

On 18 August 2005, a decision dismissing the petition was mailed to applicant indicating that the action taken by petitioner was not sufficient to prove that "a diligent effort" was made to contact the nonsigning inventor at his last known address by providing a copy of the application papers including specification, claims and drawings to Mr. Arvidsson's last known address.

On 13 February 2006, applicant filed the instant renewed petition.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Petitioner has satisfied the requirements of (1)- (4) of 37 CFR 1.47(a).

With respect to item (2), Petitioner argues that Mr. Arvidsson refuses to sign the declaration, providing a supplemental declaration of M. Angela Parsons, technologist specialist with Fish & Richardson. Ms. Parsons states that on 19 September 2005, she sent a "a copy of the above-referenced U.S. application along with a Declaration and a postage-paid return envelope to Ulf N.B. Arvidsson at his last known address." (¶ 7) According to Ms. Parsons, the FedEx website indicated that the package was signed for on 21 September 2005 by N. Arvidsson. To date, Mr. Arvidsson has not responded to the correspondence.

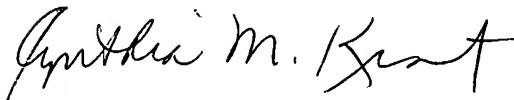
The action taken by petitioner is sufficient to prove that "a diligent effort" was made to contact the nonsigning inventor at his last known address by providing a copy of the application papers including specification, claims and drawings to Mr. Arvidsson's last known address. *See* MPEP §409.03(d). Under these circumstances, it can now be concluded that Ulf N.G. Arvidsson refuses to sign the application. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

The petition under 37 CFR §1.47(a) is GRANTED.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 18 May 2005. The application has an international filing date of 31 December 2002 under 35 U.S.C. 363, and a date of 18 May 2005 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.



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Dear Mr. Arvidsson:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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